



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Adoption of Electric Vehicle Charging Stations Categorical Exclusion under the National Environmental Policy Act

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: Notice of adoption of categorical exclusion.

SUMMARY: The U.S. Department of Transportation (DOT) is adopting the Department of Energy's (DOE's) Electric Vehicle Charging Stations Categorical Exclusion (CE) under the National Environmental Policy Act to use in DOT programs and funding opportunities administered by DOT. This notice describes the categories of proposed actions for which DOT intends to use DOE's CEs and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: April Marchese, Deputy Director, P-30, Office of Environment, by phone at 202-366-2074, or by email at april.marchese@dot.gov

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

The National Environmental Policy Act (NEPA), as amended at, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims

are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or (CE. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 42 U.S.C. 4336. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary

circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” or use another agency’s CEs for a category of proposed agency actions. 42 U.S.C. 4336(c). To use another agency’s CEs under section 109, an agency must identify the relevant CEs listed in another agency’s (“establishing agency”) NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the agency plans to use for its proposed actions; and document adoption of the CE. *Id.*

This notice documents DOT’s adoption of DOE’s Electric Vehicle Charging Stations CE under section 109 of NEPA to use in DOT programs and funding opportunities administered by DOT Operating Administrations.

II. Identification of the Categorical Exclusion

DOE’s Electric Vehicle Charging Stations CE

DOE’s electric vehicle charging stations CE is codified in DOE’s NEPA procedures as CE B5.23 of 10 CFR part 1021, subpart D, appendix B, as follows:

B5.23 Electric vehicle charging stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

“Previously disturbed or developed” refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The

phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. 10 CFR 1021.410(g)(1).

The DOE CE also includes additional conditions referred to as integral elements. (10 CFR part 1021 subpt. D, app. B) In order to apply this CE, the proposal must be one that would not

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOT or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands).

Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), “Farmland Protection Policy Act: Definitions,” or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

Proposed DOT Category of Actions

DOT intends to apply this categorical exclusion to any DOT EV charging station project undertaken directly by DOT, to any EV charger action requiring an approval by DOT, or to any project that is financed in whole or in part through Federal funds made available by DOT (including the National Electric Vehicle Infrastructure Formula Program or the Charging and Fueling Infrastructure Discretionary Grant Program).

The CE allows for the installation, modification, operation, and removal of EV charging stations. DOT will consider each proposal for EV charging stations to ensure that the proposal is within the scope of the CE. DOT intends to apply this CE in a manner consistent with DOE's application – to the same types of proposals (which have included a wide variety of locations on and off Federal property, differences in local conditions, various numbers of EV charging stations per proposal, and different types of equipment and technologies including Level 1, Level 2, and DC Fast Charging stations).

III. Consideration of Extraordinary Circumstances

When applying this CE, DOT will evaluate the proposals to ensure evaluation of integral elements listed above. In addition, in considering extraordinary circumstances, DOT will consider whether the proposed action has the potential to result in significant effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique

situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. In addition, DOT will also consider if there are any extraordinary circumstances with regards to section 4(f).

IV. Consultation with DOE and Determination of Appropriateness

DOT and DOE consulted on the appropriateness of DOT's adoption of the CE from June 2023 through early August 2023. DOT and DOE's consultation included a review of DOE's experience developing and applying the CE, as well as the types of actions for which DOT plans to utilize the CE. These DOT actions are very similar to the type of projects that DOE funds and therefore the impacts of DOT projects will be very similar to the impacts of DOE projects, which are not significant, absent the existence of extraordinary circumstances that could involve potentially significant impacts. Therefore, DOT has determined that its proposed use of the CE as described in this notice would be appropriate. Additional documentation of DOE and DOT's consultation is available upon request.

V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document DOT's adoption of DOE's CE for electric vehicle charging stations. The notice identifies the types of actions to which DOT will apply the CE, as well as the considerations that DOT will use in determining whether an action is within the scope of the CE.

Issued under authority delegated in 49 CFR 1.25(b).

Carlos Monje, Jr.,

Under Secretary of Transportation for Policy,

U.S. Department of Transportation.